

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.7110 OF 1991

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

ANSUBEN MOHANBHAI MAKWANA
VERSUS
HALVAD NAGAR PANCHAYAT

Appearance:

MS P. MEHTA for the Petitioner
MR AD PITHANI for the Respondent

Coram: S.K. Keshote,J
Date of decision:15/08/1997

C.A.V. JUDGMENT

#. The petitioner, by this Special Civil Application, prays for issuance of writ of Mandamus or a writ in the nature of Mandamus or any appropriate writ, order or direction directing the respondent to reinstate the petitioner in service on the post of Sweeper. Further prayer has been made for reinstatement and absorption of petitioner on permanent post of Sweeper on the basis of her seniority as daily rated worker.

#. The petitioner states that she was serving as a class IV employee with the respondent Nagar Panchayat since 1981. She was employed as a Sweeper on daily wage basis. Instead of regularizing their services, the petitioner, alongwith other co-workers were relieved from services by respondent. Industrial dispute has been raised against the action of respondent which has been referred to the Labour Court at Surendranagar being Ref.No.110/89. The disputes of other co-workers, whose services were terminated alongwith the petitioner, were also referred before the Labour Court and all the references came to be dismissed by a common Award dated 15th March 1991. The petitioner has not challenged that Award in this Special Civil Application. The petitioner has made a grievance that the respondent, after passing of the Award aforesaid, reinstated co-workers of the petitioner who were also parties in Reference and their names have been mentioned in para-5 of the Special Civil Application, and as such a hostile discrimination has been made by not giving employment to the petitioner. The case of the petitioner and those co-workers was identical in all respect but the respondent has favoured those persons and the petitioner has been singled out. In para-6 of the Special Civil Application, further grievance has been made that persons junior to the petitioner have been retained in service, though may be because of some interim order of this Court in Special Civil Application No.5593 of 1991. The last grievance has been made that respondent has employed fresh persons as class IV, completely bypassing the name of petitioner. Reference of such cases has been made in para-7 of the Special Civil Application. Hence this Special Civil Application.

#. The respondent has not filed any reply to the Special Civil Application.

#. The learned counsel for the petitioner contended that when the similar situated persons, i.e. the petitioner and other co-employees of petitioner were relieved by respondent and their reference have also been rejected by the Labour Court like petitioner's reference, some of

such co-workers have been reinstated and as such, it is a clear case of hostile discrimination. Next contention has been made that juniors have been retained and lastly it is contended that recruitment has been made for class IV completely bypassing the name of the petitioner.

#. On the other hand, the learned counsel for the respondent submitted that the petitioner has no right for reinstatement. The cases of those persons have been considered on their own facts and on this ground no plea of discrimination can be raised.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. The factual averments made by the petitioner in Special Civil Application stand uncontroverted as reply to the Special Civil Application has not been filed by the respondent. So the fact that other co-workers of the petitioner who have been relieved like the petitioner from services by respondent and who have also raised industrial dispute like the petitioner, and that dispute has also been dismissed like the petitioner, have been reinstated, stand uncontroverted. The fact that three persons of this class, namely, (1) Gauriben Savubhai, (2) Ranjanben Amibhai and (3) Dayaben Bachubhai, have been taken back in service, also stand uncontroverted. It is not the case of respondent that those persons have been taken back in service on having been found suitable in selection held, by inviting names from employment exchange or from open market. So when the persons who were similarly situated have been taken back in service, it was obligatory on the part of respondent to consider the case of petitioner also, which precisely has not been done.

#. In the result, interest of justice will be served in case this Special Civil Application is disposed of with directions to respondent to consider the case of petitioner for taking her back in services with reference to cases of aforesaid three persons. In case the petitioner's claim for reinstatement is not acceptable, the respondent shall pass a reasoned order and a copy of the same may be sent to the petitioner by registered post A.D. This exercise has to be undertaken by respondent within a period of four months from the date of receipt of certified copy of this order. Before passing any adverse orders against the petitioner, it is expected of the respondent to give an opportunity of hearing to the petitioner. In case the claim made by petitioner in this Special Civil Application is accepted, then she will be

entitled for all benefits at par with the benefits given to the aforesaid three persons. However, she will not be entitled for actual monetary benefits for the interregnum, i.e. till date. Looking to the fact that the petitioner is a Sweeper, a person belonging to downtrodden class, liberty is granted to approach this Court for revival of this Special Civil Application in case of difficulty.

#. The Special Civil Application and Rule stand disposed of in aforesaid terms with no order as to costs.

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